

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 08-242
Table of Allotments,)	RM-11506
FM Broadcast Stations.)	
(Ten Sleep, Wyoming))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 30, 2009

Released: August 3, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (the “Notice”)¹ issued at the request of Legend Communications of Wyoming, LLC (“Petitioner”), requesting the allotment of Channel 267A at Ten Sleep, Wyoming. The purpose of the requested allotment is to maintain Ten Sleep’s first local service. Petitioner is the permittee of Station KYTS(FM), Channel 271C2, at Ten Sleep, providing a potential first local service to that community, but the station has neither been constructed nor become operational. Accordingly, Petitioner asserts that it may be allowed to change the community of interest for Station KYTS(FM), from Ten Sleep to Manderson, because the “backfill” proposal for Ten Sleep is consistent with the policy articulated in *Pacific Broadcasting of Missouri LLC*.² Concurrent with the filing of its petition for rule making, Petitioner submitted a Form 301 with the requisite fee seeking authority to construct FM Channel 267A at Ten Sleep.³ Petitioner also submitted a Form 301 application to modify Petitioner’s construction permit for Station KYTS(FM), Channel 271C2, by changing the station’s community of license from Ten Sleep to Manderson, Wyoming.⁴

2. In response to the Notice, White Park Broadcasting, Inc. (“White Park”) filed a counterproposal to allot Channel 267A at Lucerne, Wyoming, as the community’s first local aural transmission service. Petitioner filed comments reiterating its interest in the allotment of Channel 267A at Ten Sleep.

3. In its counterproposal, White Park states that Lucerne, a Census Designated Place with “various institutions, businesses and organizations,” is a community for allotment purposes. White Park also argues

¹ *Ten Sleep, Wyoming*, Notice of Proposed Rule Making, 22 FCC Rcd 11602 (MB 2007)

² *Pacific Broadcasting of Missouri LLC*, (Letter Ref. No. 1800B3-LAS [M.Bur. Dec. 21, 2001]), *app. for rev. denied*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004).

³ BNP-20080916ADK.

⁴ BMP-20080916ABE.

that Lucerne has a greater population than Ten Sleep and therefore allotment of Channel 267A at Lucerne, rather than Ten Sleep, constitutes a preferential arrangement of allotments under the Commission's allotment priorities. White Park alleges that the allotment of Channel 265C2 at Lucerne would provide a 60 dBu signal to a geographical area of 8,290 square kilometers, including a population of 13,164 persons. White Park does not, however, identify the proposed reference coordinates for Channel 265C2, nor supply a channel study in support of its counterproposal.

4. Petitioner submitted reply comments in response to White Park's counterproposal. Petitioner argues that White Park's counterproposal is defective because it fails to include the technical information necessary to evaluate the proposal, and it fails to provide coverage to 100 percent of the proposed community of license, Lucerne, Wyoming. Petitioner further argues that, even if the Commission considers White Park's counterproposal, it is possible to grant both Petitioner's proposal to allot Channel 267A at Ten Sleep, Wyoming, and White Park's counterproposal to allot a Class C2 channel, FM Channel 283C2, at Lucerne.

5. It is well-established that an allotment counterproposal must be technically correct and substantially complete at the time that it is filed.⁵ In its counterproposal, White Park did not specify the reference coordinates of proposed FM Channel 265C2 at Lucerne, nor did it submit a technical showing demonstrating that its proposed allotment would comply with the Commission's minimum distance separation requirements.⁶ A counterproposal that is not technically correct and substantially complete as filed is defective. For that reason, we have not put White Park's counterproposal on public notice, and we are dismissing it without consideration.

6. We shall allot FM Channel 267A at Ten Sleep, as originally proposed in this proceeding. The allotment of Channel 267A will maintain a potential first local service at Ten Sleep while accommodating Petitioner's proposed change of community of license for Station KYTS(FM), Channel 271C2, from Ten Sleep to Manderson, Wyoming, where Station KYTS(FM) will provide a first local service. A staff engineering analysis shows that Channel 267A can be allotted at Ten Sleep at a site 0.3 kilometers (0.2 miles) northeast of the community at reference coordinates 44-02-08 NL and 107-26-50 WL.

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801 (a)(1)(A).

8. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED That, effective September 17, 2009, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Ten Sleep, Wyoming	267A

⁵ See *Cloverdale, Alabama*, Memorandum Opinion and Order, 12 FCC Rcd 2090, 2093 (MMB 1997), *app. for rev. denied*, Memorandum Opinion and Order, 15 FCC Rcd 11,050 (2000).

⁶ See *Eldorado and Lawton, Oklahoma*, Report and Order, 5 FCC Rcd 6737 (MB 1990).

9. IT IS FURTHER ORDERED, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), and subject to final approval of petitioner's application to change the community of license for Station KYTS(FM), Channel 271C2, from Ten Sleep to Manderson, Wyoming,⁷ that effective August 24, 2009, the Media Bureau's Consolidated Data Base System will reflect petitioner's construction permit for Station KYTS(FM), Channel 271C2, at Manderson, Wyoming.

10. IT IS FURTHER ORDERED, That the counterproposal filed by White Park Broadcasting, Inc. IS DISMISSED as defective.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. A filing window period for Channel 267A for Ten Sleep, Wyoming, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

13. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau

⁷ BMPH-20080916ABE.